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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

9 SIMONA G. MARIE and THOMAS
10 LEWIS, spouses, and ALTCONT, LLC,
a Washington limited liability company,

CAUSE NO. 4:23-cv-5093

11
12 Plaintiffs,

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

13 v.

14 PACIFIC LIFE INSURANCE
15 COMPANY, a foreign corporation;
16 HARDING FINANCIAL PARTNERS,
17 INC. a foreign corporation; ANDREW
18 J. BROWN, an individual; and
UNKNOWN DEFENDANTS 1
through 5, unknown individuals and/or
entities,

19 Defendants.
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21 Plaintiffs Simona G. (“Simona”) Marie and Thomas (“Tom”) Lewis, by and
22 through their undersigned attorneys, allege as follows:
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I. PARTIES

1. Plaintiffs. At all times pertinent to this action, Plaintiffs Simona Marie and Tom Lewis have been a married couple residing in Richland, Benton County in the state of Washington. Plaintiff Altcont, LLC was a Washington limited liability company, with its headquarters in Richland, Benton, County, Washington, which was incorporated on December 18, 2017 and voluntarily dissolved on March 25, 2022. Its affairs have not been wound up. Simona Marie and Tom Lewis were co-equal members of Altcont, LLC. Simona Marie was the sole governor of Altcont, LLC.

2. Defendant Pacific Life Insurance Company. At all times pertinent to this action, Defendant Pacific Life Insurance Company (“PacLife”) has been a business entity arising and existing under the laws of the state of Nebraska, with its headquarters at 700 Newport Center Dr., Newport Beach, CA 92660. At all times material to this action, PacLife has been authorized by the state of Washington Office of the Insurance Commissioner to sell disability and life insurance.

3. Defendant Harding Financial Partners, Inc. At all times material to this action: Defendant Harding Financial Partners, Inc. (“HFPI”) has been a business entity organized and existing under the laws of the state of Utah, with its headquarters at 4245 Wasatch Blvd. #210, Salt Lake City, Utah. Beginning on or about October 17, 2017, and at all times thereafter pertinent to this action, HFPI has

1 been an agent of PacLife registered as an insurance producer with the state of
2 Washington Office of the Insurance Commissioner under its identification number
3 964965. HFPI has held itself out as a financial planning organization dedicated to
4 offering an array of coordinated investment planning and personal insurance options
5 to its clients looking to build, protect and distribute their personal wealth. HFPI has
6 held itself out to the public as a wealth management organization dedicated to
7 assisting successful medical professionals and small business owners in developing
8 comprehensive solutions to decisions regarding their wealth.
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10 4. Defendant Andrew J. Brown. Defendant Andrew J. (“Andy”) Brown is a
11 resident of Utah and is domiciled there. Beginning on October 18, 2017, and at all
12 times thereafter material to this action, he has been registered as an insurance
13 producer for PacLife and HFPI with the state of Washington Office of the Insurance
14 Commissioner under its identification number 965117, and with a business address
15 of 6405 S. 3000 E, Ste. 250, Holladay, UT 84121-6970. Beginning on October 4,
16 2019 through the present, he has been registered with the state of Washington Office
17 of the Insurance Commissioner as an insurance producer for Raymond James
18 Insurance Group, Inc. His National Association of Insurance Commissioners’
19 National Producer Number is 16890993. At all times pertinent to this action: Andy
20 Brown has been a financial advisor for HFPI and a managing officer of HFPI. Mr.
21 Brown and his team of specialists have held themselves out as helping clients in the
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1 areas of estate, business succession, retirement, risk management, tax strategies, and
2 financial planning. Mr. Brown and his team of specialists have held themselves out
3 as working closely with their clients' accountants, attorneys and other advisors. Mr.
4 Brown and his team of specialists have held themselves out as conversant with the
5 major points of law and regulations that affect their client's financial statements.
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7 5. Unknown Defendants. Unknown Defendants are unknown individuals
8 and/or entities, other than Plaintiffs, who were involved, directly or through their
9 agents, in making representations to and/or facilitating the purchase of the insurance
10 policy at issue in this lawsuit and/or profiting from that policy. Subject to further
11 investigation and discovery, they may include, but are not limited to, any other entity
12 of which Andy Brown is an owner or agent, including but not limited to: Raymond
13 James Insurance Group, Inc., and Planning Corporation of America.
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15 II. JURISDICTION & VENUE

16 6. Subject matter jurisdiction. This Court has jurisdiction over the subject
17 matter of this lawsuit, pursuant to 28 U.S.C. § 1332, because the matter in
18 controversy exceeds the sum or value of \$ 75,000, exclusive of interest and costs,
19 plaintiffs and defendants are citizens of different states, and no defendant is a citizen
20 of the state of Washington.
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22 7. Personal jurisdiction. This Court has personal jurisdiction over each of the
23 Defendants because this cause of action arises out of alleged wrongful acts
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1 Defendants committed in the state of Washington through acts and/or omissions
2 occurring in the state of Washington and affecting Plaintiffs in the state of
3 Washington. Specifically, Defendants, by and through their agents, promoted, sold
4 and distributed the insurance policy at issue into the state of Washington and to its
5 residents including Plaintiffs, received consideration from Plaintiffs while they were
6 located in the state of Washington, and/or sent regular statements and a payment to
7 Plaintiffs located in the state of Washington; and as a result of those activities,
8 incurred obligations and liabilities to Plaintiffs located in the state of Washington.
9 In this matter each Defendant was timely served with process at a place and in a
10 manner authorized by law.
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13 8. Venue. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391,
14 because this action is brought in a judicial district in which a substantial part of the
15 events or omissions giving rise to the claim occurred. Alternatively, on information
16 and belief, at least one corporate defendant has contacts with this Court and with this
17 District sufficient to subject it to personal jurisdiction within this Court and District
18 as if that district were a separate state, or if there is no such district, at least one such
19 corporate defendant has the most significant contacts within this District. For
20 example, PacLife lists financial professionals located in Richland, Kennewick and
21 Yakima Washington selling its products, presumably to Washington citizens
22 residing in or around those municipalities.
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III. FACTS GIVING RISE TO LIABILITY

9. PDX Policy. In February 2017, PacLife started selling a type of Indexed Universal Life (“IUL”) insurance policy called Pacific Discovery Xelerator (“PDX”). The policy was marketed as an investment to build substantial long-term cash value through appreciation, by contrast to most life insurance which is marketed to provide a death benefit usually at a relatively low periodic cost. PDX policies carry high risk and high leverage for an IUL product. To allay consumer concerns about that high risk, PacLife also sought to convince buyers of PDX policies that they were protected from downside market risk by a guaranteed 0% credit interest rate.

10. Nature. PDX policies are extremely difficult for consumers and perhaps even brokers to understand. The sales illustrations overstate future performance and do not disclose key assumptions, including but not limited to PacLife’s so-called “Performance Factor”, that produce extremely high fee costs and risks.

11. Actuarial Guideline 49. National Association of Insurance Commissioners (NAIC”) promulgated its Actuarial Guideline 49 (“AG 49”). AG 49 became effective for all policy illustrations generated on or after September 1, 2015. AG 49’s purpose is to prevent insurers and their agents from presenting misleading illustrated interest rates and returns to sell IUL policies. The guideline was a reaction to misleading practices of insurance companies and their agents that had been

1 seeking to outdo their competition's illustrations by showing life insurance
2 consumers potentially unrealistic illustrated policyholder returns based on self-
3 servingly selected past periods of market performance that were not representative
4 of conditions likely to recur (sometimes called "backcasting" or "index selection"),
5 and/or otherwise based on unsustainable projections. In response to industry
6 concerns that these high illustrated rates were highly unlikely to be achieved, could
7 lead to widespread consumer disappointment and potentially damage the reputation
8 of the entire life insurance industry, NAIC promulgated AG 49, which limited the
9 annual S&P 500 index-based rate of return used to illustrate the projected growth of
10 IUL policy investments. AG 49 set a benchmark rate based on annual returns on
11 S&P 500 starting 66 years before the current calendar year and calculated using the
12 geometric average for successive 25-year periods. In this way, AG 49 prohibited
13 insurers from assuming higher crediting rates to pump up illustrated investment
14 growth in IUL policies.

17 12. Performance Factor. The uniformity NAIC sought to impose was soon
18 undermined to the detriment of consumers. To boost illustrations and evade AG 49,
19 PacLife adopted the PDX Performance Factor. The PDX Performance Factor was
20 an unspecified non-guaranteed proprietary multiplier applied after policy year 3 as
21 a factor to indexed credits. The Performance Factor inflated projected rates of return
22 to IUL policy value, and thereby circumvented the S&P 500 index limitation
23

1 addressed by AG 49. The Performance Factor was used by PacLife and its agents to
2 market and sell PDX policies based on practically unattainable policy performance
3 illustrations of returns that are well beyond those that would result from applying
4 AG 49. PacLife and its agents used the Performance Factor to convince
5 policyholders that PDX policies were more lucrative than competing life insurance
6 products that lacked a similar multiplier. PacLife and its agents further concealed
7 and confounded the role of the Performance Factor in building up the stated dollar
8 values in PDX illustrations by making reference to the “underlying Index” and
9 indicating that its “historical performance ... should not be considered a
10 representation of past or future performance of the Indexed Accounts.”
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13 13. Performance Factor Characteristics. The PDX Performance Factor is a
14 multiplier that applies to index credits after the third policy year, and was guaranteed
15 to be not less than 1. The Performance Factor is based at least in part upon assumed
16 but realistically unsustainable options trading profits. The illustrations defer non-
17 guaranteed value growth into years that are well beyond current actuarial life
18 expectancies. PacLife used the Performance Factor as an unexplained, or at least
19 underexplained, discretionary and illusory guaranty that would allow PacLife to
20 collect extremely high fees without delivering the illustrated returns or anything like
21 them.
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1 14.Policy Charges. PDX policy charges are used to buy call options that are
2 subject to market volatility, and thus market risk, which can reduce PDX account
3 value; contrary to the policy's zero-percent minimum interest crediting guarantee.
4 In addition, PDX policy illustrations assume call options will generate a fifty percent
5 profit in perpetuity on each transaction, contrary to actuarial reason. The high
6 charges and unrealistically high option trading profit projections lead to indefensibly
7 inflated illustrated performance and value without full disclosure of the associated
8 substantial market risk.
9

10 15.Additional Premiums. PDX policies present a substantial risk that poor
11 index performance and/or failure to realize projected option profits will cause
12 negative returns on policyholder account values, and could cause the policy to lapse,
13 unless the policyholder pays additional substantial premiums. Those premiums
14 would be more than the policyholder had been led to believe would be required to
15 generate the projected eventual payout. This cold reality directly contradicted
16 PacLife's misrepresentations that PDX policyholders faced no downside market
17 risk. Furthermore, the PDX illustrations falsely suggested that the single-digit
18 disclosed interest crediting rate would lead to "conservative" double-digit returns,
19 when in fact those projected returns were the result of the undisclosed and
20 mysterious Performance Factor, reportedly responsible for over one third of
21 illustrated performance.
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1 16.Comparative Risk. No IUL product in the industry contemporaneous with
2 the PDX policy was riskier than the PDX policy.

3 17.Sales Incentive. To further encourage the sale of PDX policies, PacLife
4 offered its agents commissions up to three times higher than other policies when a
5 substantial portion of the policy's face amount was allocated to base coverage, as
6 distinct from term coverage provided under an Annual Renewable Term Rider.
7 Plaintiffs did not purchase such a rider.

8 18.Illustration enhancement. PDX told at least some of its life insurance
9 producers and others that the PDX policy "illustrates particularly well when funded
10 with large premiums within the policy's first 7 to 10 years" based on the
11 "performance factor that may increase policy performance on a nonguaranteed
12 basis," and that its Performance Factor may enhance indexed interest credits.

13 19.AG 49-A. In late 2020, NAIC promulgated Actuarial Guideline 49-A
14 entitled *The Application of the Life Illustrations Model Regulation to Policies with*
15 *Index-Based Interest to Policies Sold On or After December 14, 2020* ("AG 49-A").
16 AG 49-A is designed to further protect life insurance consumers by preventing
17 insurers and their agents from presenting misleading illustrated interest rates and
18 returns to sell IUL policies. AG 49-A specifically prohibits the prospective use of
19 mechanisms such as the PacLife Performance Factor. AG 49's purpose is to address
20 the confusion potential policy buyers and uncertainty among illustration actuaries
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1 that results from lack of uniformity when evaluating policies such as the PDX policy,
2 particularly in comparison with competing policies, in order to bring uniformity to
3 illustrations of life insurance policies that are tied to an external index or indices by
4 providing a reasonable cap on the illustrated crediting value.

5
6 20.Surrender Charges. Upon purchasing a PDX policy, the policy language
7 gives PacLife the right to retain huge surrender charges in the first ten years, which
8 creates a powerful disincentive to the policyholder to the surrender the policy while
9 PacLife is collecting exorbitant fees.

10 21.Knowledge. PacLife was fully aware of the characteristics of PDX
11 policies that made them both highly marketable and highly profitable. PacLife knew
12 that the embedded and concealed option profit assumptions in the PDX illustrations
13 and based on the non-guaranteed Performance Factor would be unsustainable.
14 Accordingly, PacLife knew that the returns depicted in the illustrations could not be
15 realized. PacLife is a sophisticated insurance company, and therefore either knew
16 or reasonably should have known that other insurers, including MetLife, New York
17 Life, Northwestern Mutual and OneAmerica submitted a joint position statement to
18 the NAIC that explained that illustrations showing projected earnings of fifty percent
19 annual returns, year after year, are the product of “an unreasonable long-term
20 assumption, which creates unrealistic consumer expectations.” They explained:
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23 There is little, if any, reason to believe that options systematically
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1 deliver meaningful profits to the buyer over extended periods of time
2 for the following reasons:

3 1) Options are financial instruments with contingent payoffs. As
4 is well documented in academic literature, the expected price to enter an
option transaction is the present value of its expected future payoff –
in other words, a zero profit baseline assumption.

5 2) In an option transaction, both parties assume risk on opposite sides
6 of the same trade. As a result, evaluating options transactions under
a long-term risk/return framework is not particularly useful....

7 3) The best analogy for options is insurance. Using an option to hedge is
8 analogous to buying an insurance policy because the held risk is
transferred to a third party. As with any insurance policy, we should
9 expect the seller to recoup profits for accepting risk over the long
run....

10 4) The best evidence against the idea of systematic profits to option
11 buyers is the fact that investment professionals, endowments and
12 pension funds do not employ the strategy as a way to enhance returns
with very little risk, as is argued with IUL products. ... [I]f buying
13 options is so incredibly profitable and has been for such a long time
with so little variation, then why doesn't everyone do it and why aren't
14 life insurers employing this strategy to generate higher returns in their
own general accounts?

15
16 Neither PacLife nor any of its agents educated Plaintiffs about these concerns.

17 22. Agent Representations. On or about December 11, 2017, PacLife's agents,
18 HFPI and Andy Brown, presented Simona Marie and Altcont with a life insurance
19 policy illustration of a PacLife PDX policy. The illustration showed that for an
20 initial \$ 1,000,000 premium spread over five annual \$ 200,000 payments, by policy
21 year 19, when Simona Marie would reach the age of 67, the policy's non-guaranteed
22 surrender value would be \$ 1,859,657; by policy year 52, when Simona Marie would
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1 reach the age of 100, the policy's non-guaranteed surrender value would be \$
2 1,418,244; and by policy year 71, when Simona Marie would reach the age of 119,
3 the policy's non-guaranteed surrender value would be \$ 90,607,751, assuming she
4 were to take annual policy loans of \$ 250,695 starting at policy years 19 to 52 when
5 she would be ages 67 to 100.
6

7 23.Charges Unexplained. Although the illustrations Andy Brown provided to
8 Simona Marie and Altcont illustrated policy charges based on non-guaranteed
9 values, Andy Brown did not fully explain to Simona Marie or to her spouse Tom
10 Lewis, or to Altcont, the nature and purpose of those charges.
11

12 24.Performance Factor Unexplained. At no time before Plaintiffs purchased
13 the PDX Policy did PacLife or any of its agents accurately explain to Plaintiffs the
14 formula PacLife used to determine the Performance Factor, and the effect of the
15 Performance Factor on its illustrations, including, but not limited to, any side-by-
16 side comparison to illustrations comporting with the alternative methods
17 contemplated in AG 49.
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19 25.Performance Factor Used. The illustrations Andy Brown provided to
20 Simona Marie and Tom Lewis were generated using PacLife's illustration software,
21 and contained the Performance Factor. The illustration was therefore not realistically
22 achievable and was false.
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1 26.Policy purchase. On or about 12/15/2017, Plaintiffs acting through Simona
2 Marie purchased a PDX policy on her life through PacLife's agents, HFPI and Andy
3 Brown. The policy number was VF531193770 and had a policy issue date of
4 12/8/2017. The designated policy owner and insured were each Plaintiff Simona
5 Marie. The face value of the policy was \$ 4,522,500. The death benefit was
6 contracted to be the face value plus the policy's accumulated value. Her designated
7 death beneficiary was her spouse, Tom Lewis.

9 27.Purposes. In addition to the PDX policy's death benefit, the policy
10 permitted Simona Marie to take loans against the policy based on the growth of the
11 premiums invested. Simona Marie and Tom Lewis purchased the policy with the
12 intent to provide them with income in retirement.

14 28.Policy Performance Factor. Simona Marie's PDX policy Guaranteed
15 Minimum Performance Factor was 1.00 for each Segment Term. The Policy
16 Specifications provided that the Performance Factor "is the factor used to determine
17 the final Segment Indexed Interest and Segment Guaranteed Interest Rate. The
18 Guaranteed Minimum Performance Factor is shown above [*i.e.*, 1.00 for each
19 Segment Term]. We may declare a higher Performance Factor. Certain policy
20 charges may be used in determining the Performance Factor."

22 29.Alternate Loan Rider. Simona Marie's PDX policy included an Alternate
23 Loan Rider.

1 30.Benefit Distribution Rider. Simona Marie's PDX policy included a
2 Benefit Distribution Rider. That rider provided that all, or a portion of the policy's
3 Death Benefit Proceeds would be paid over 30 years as a series of monthly Periodic
4 Payments at a benefit Distribution guaranteed Interest Rate of 2 percent.

5
6 31.No-Lapse Guarantee Rider. Simona Marie's PDX policy included a No-
7 Lapse Guarantee Rider with a guarantee period of 20 years and initial premium of \$
8 111,156.00.

9 32.Premium Payment. Plaintiff Altcont, LLC paid premiums on Simona
10 Marie's PDX policy. Altcont, LLC was funded by revenue generated by Simona
11 Marie in her medical practice.

12
13 33.2017-18 Premium. On or about December 18, 2017, Altcont, LLC made
14 an initial annual premium payment of \$ 200,000 to PacLife.

15 34.Statement 3/7/2018. PacLife sent Simona Marie a statement of her PDX
16 policy for the period 12/8/2017-3/7/2018. Among other things, the statement stated
17 Accumulated Value in that period of \$ 164,090.86.

18
19 35.Assurance and Reliance. In March 2018, Simona Marie and Tom Lewis
20 told Andy Brown that Plaintiffs were concerned that the fees PacLife charged for
21 the PDX policy seemed very high. Andy Brown assured Simona Marie and Tom
22 Lewis that the fees were appropriate and they would get their money back in the end.
23 Plaintiffs relied on these assurances.

1 36.Policy Charges 12/8/2017-12/7/2018. From Plaintiffs' contributions and
2 accumulations, PacLife paid itself policy charges of \$ 110,409.88 in the period
3 12/22/2017-12/7/2018.

4 37.2018-19 Premium. On 12/11/2018, Altcont, LLC paid PacLife a second \$
5 200,000.00 annual premium on Plaintiffs' PDX policy.

6 38.Policy Charges 12/8/2018-12/7/2019. From Plaintiffs' contributions and
7 accumulations, PacLife paid itself policy charges of \$ 99,415.40 in the period
8 12/8/2018-12/7/2019.

9 39.Lower Premium. In October 2019, Andy Brown assured Plaintiffs that
10 they could modify their PDX policy benefits by reducing the amount of their
11 premium to \$ 35,000 in the last three of the five years of the premium payment
12 period, in exchange for reduced financial benefits, including reduced annual income
13 to \$ 117,000 per year from ages 65 to 100, and "You would have the money back
14 you put into the plan in 4 ½ years". No illustration of the benefits to be obtained
15 through the revised premiums was provided to Plaintiffs. This projection was
16 apparently based on a projection Andy Brown ran in his head.

17 40.Reduction. In reliance on Andy Brown's representations as described in
18 the preceding paragraph, on or about November 21, 2019, Plaintiffs and Defendants
19 agreed to revise Plaintiff's anticipated third, fourth and fifth-and-final annual
20 "Flexible Premium Indexed Adjustable Life Insurance" PDX policy premiums from
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1 \$ 200,000 to \$ 35,000 per year, in exchange for the projected reduced future 30-year
2 benefit.

3 41. October 10-11, 2019 Emails. On October 10, 2019 and October 11, 2019,
4 Simona Marie and Tom Lewis had the following email exchange with HFPI and
5 Andy Brown:
6

7 **From:** simona marie <sgmarie@yahoo.com>
8 **Sent:** Thursday, October 10, 2019 12:28 PM
9 **To:** Andy Brown <andy.brown@hardingfp.com>
10 **Cc:** Tom Lewis <tomlewis2005@yahoo.com>
11 **Subject:** Pacific Life new yearly premium

12 Hi Andy!

13 It was nice talking to you on Monday.

14 When do you think you can send us the new numbers considering the fact that we want
15 to lower the Pacific Life yearly premium to \$ 33,333.33?

16 Thanks!

17 Simona and Tom

18 andy.brown@hardingfp.com

19 To: 'simona marie' <sgmarie@yahoo.com>

20 Cc: 'Tom Lewis' <tomlewis2005@yahoo.com>

21 Hello Simona and Tom,

22 I heard back from the TPA and he ran the numbers for you corporate sponsored group life plan. You can
23 reduce the premium to \$33,333 for the next 2 years on the final year you will have to add another \$5k
24 depending on the returns of the investment account. He said it would be better if you can do \$35,000 for
the next three years. The income will be \$117,000 a year from age 65 to 100. You would have the money
back you put into the plan in 4 ½ years. Let me know your thoughts or if you would like me to schedule a
call to go over the details.

Talk to you soon,

Andy Brown
Vice President of Investments
Harding Financial Partners
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Salt Lake City, UT 84124
andy.brown@hardingfp.com
(W) 801.349.3545 (C) 801.717.8384 (F) 801.349.3544

1 42.No Illustration of Change. No Defendant provided Plaintiffs an illustration
2 concerning the impact of reduced premiums on the policy payments or benefits.

3 43.No Warning of Lapse: 2017. The Narrative Summary contained in the life
4 insurance illustration Andy Brown had provided Simona Marie on or about
5 December 11, 2017 (nearly two years earlier) contained a vague statement that “If
6 you pay lower premiums than illustrated or policy performance is less favorable than
7 illustrated, there is an increased risk of policy lapse, particularly in the early years.”
8 A footnote in the illustration states, in part, “A zero in the Premium Outlay column
9 does not mean the policy is paid up. Charges will continue to be deducted from the
10 Accumulated Value as long as the policy remains in-force. The actual premium
11 amounts and number of years of premium payments that are needed to maintain the
12 illustrated non-guaranteed policy benefits will depend on the policy's non-
13 guaranteed elements and on your actual use of the policy's options.” However, that
14 illustration has \$ 200,000, not zero, in the premium outlay column for years 1
15 through 5 of the policy.
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18 44.No Warning of Lapse: 2019. Up to November 21, 2019, neither Andy
19 Brown nor anyone else at HPFI made any mention to Plaintiffs that reducing Simona
20 Marie’s PDX policy annual premium to \$ 35,000, and/or changed market conditions,
21 could cause the policy to lapse. Nor did any Defendant explain to Simona Marie or
22 Tom Lewis why or exactly how market conditions could increase the risk of policy
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1 lapse. Nor did any Defendant tell Plaintiffs that they would need to make
2 contributions after the first five years of premium payments were paid in full to keep
3 the policy from lapsing. In fact, the October 11, 2019 email from HPFI and Andy
4 Brown to Simona Marie and Tom Lewis suggested the contrary.

5
6 45.PacLife's Discretion. The Narrative Summary contained in the life
7 insurance illustration Andy Brown had provided Simona Marie on or about
8 December 11, 2017 admits, "This illustration assumes that currently illustrated non-
9 guaranteed elements will continue as shown for all years illustrated." The Narrative
10 Summary also states, "Non-guaranteed/current elements are not guaranteed by
11 definition. As such, Pacific Life Insurance Company reserves the right to change or
12 modify any of these elements. This right to change these elements is not limited to a
13 specific time or reason." A footnote on the illustration's Policy Loan Details states,
14 "The actual premium amounts and number of years of premium payments that are
15 needed to maintain the illustrated non-guaranteed policy benefits will depend on the
16 policy's non-guaranteed elements and on your actual use of the policy's options."
17 The Narrative Summary also states, "You may also request illustrations with
18 different assumptions to better understand how the policy charges and non-
19 guaranteed elements, like interest crediting rates and/or policy loans and
20 withdrawals, will affect the policy Accumulated Value and Death Benefit." Yet, up
21 to the time that statement was provided, no Defendant explained to any Plaintiff
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1 what any such change could be or how it could affect the policyholder's benefits.

2 46.2019-20 Premium. On or about 11/18/2019, Altcont, LLC timely paid
3 PacLife the third annual premium in the amount of \$ 35,000.

4 47.Policy Charges 12/8/2019-12/7/2020. From Plaintiffs' contributions and
5 accumulations, PacLife paid itself policy charges of \$ 100,872.36 in the period
6 12/8/2019-12/7/2020.

7 48.2020-21 Premium. On or about 11/17/2020, Altcont, LLC timely paid
8 PacLife the fourth annual premium in the amount of \$ 35,000.

9 49.Policy Charges 12/8/2020-12/7/2021. From Plaintiffs' contributions and
10 accumulations, PacLife paid itself policy charges of \$ 100,649.22 in the period
11 12/8/2020-12/7/2021.

12 50.2021-22 Premium. On or about 11/14/2021, Altcont, LLC timely paid
13 PacLife the fifth-and-final annual premium in the amount of \$ 35,000.

14 51.Administrative Fees. On or about each of 12/18/2017, 1/5/2019,
15 10/20/2019, 12/5/2020, and 11/14/2021, Altcont, LLC timely paid Corporate Asset
16 Retention, Inc. \$ 400 as an annual administrative fee for administrative services in
17 accounting for the annual funding cost of Plaintiffs' corporate sponsored group life
18 insurance policy; namely, the PDX policy. Those fees totaled \$ 2,000.00.

19 52.December 2021 Meeting. On December 10, 2021, Plaintiffs Simona Marie
20 and Tom Lewis met with Andy Brown on a Zoom.com video call, to discuss ways
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1 to optimize their investment, in anticipation of making their final annual payment on
2 Simona Marie's PDX policy. In the meeting, Andy Brown told Simona Marie and
3 Tom Lewis -- to their surprise -- that the PDX policy benefit would go to zero (*i.e.*,
4 become worthless), because the contributions they had made to date would be
5 inadequate to result in the projected policy benefit. He told Plaintiffs that in order to
6 sustain the contract, they would have to make payments for years after 2022. Making
7 such payments was not what he had led Plaintiffs to believe when they had purchased
8 the policy or when they had reduced the policy benefit in exchange for lower
9 premiums.
10

11 53.Illustrations Requested of Andy Brown. After the December 10, 2021
12 meeting with Andy Brown, Plaintiffs requested of him and HFPI illustrations that
13 would show how the decreased premiums would affect the policy benefit.
14 Defendants Andy Brown and HFPI did not immediately provide such an illustration,
15 but said "We have the illustration team at Pacific Life running the numbers to see if
16 we can decrease the death benefit." On December 15, 2021, Simona Marie emailed
17 Andy Brown stating, "I have lots of questions," and requesting an explanation of the
18 impact of the reduced premiums on her ability to receive benefits while alive and
19 her desire to save the policy.
20

21 54.December 17, 2021 Email from Andy Brown. On December 17, 2021,
22 Andy Brown sent the following email to Simona Marie:
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1 Hello Simona,

2 We are working with Pacific Life and the TPA to get the correct numbers.

3 The issue industry wide is that with the new AG49a regulations (took effect Dec 14, 2020), the government
4 tells us what interest rate we can run illustrations at, we are not allowed to show actual returns. Previous
illustrations that we ran were based on actual performance.

5 As an example, your most recent interest earning percentage was 44% for the past 12 months (see
6 attached). But on the illustration, we cannot currently show interest earnings of more than 6.4%. So on
the illustration, we are missing about 37% of that actual performance. The illustration allows us to show
actual fees charged, but not actual performance of the interest credits.

7 I have an appointment with Corporate Asset Retention on Tuesday of next week to work this out for you.
8 This is high priority for me.

9 Attached is the Segment Maturity Notice that shows the segment that matured on the Dec 15th had a
return of 44% \$68,496.82 was credited to you policy.

10 Talk to you soon,
11 Andy

12 Those statements were in part false and were misleading. Andy Brown did not
13 explain AG 49-A's prospective scope. His statements suggest that the prior
14 illustrations provided to Plaintiffs were based on actual performance (of what is
15 unclear, given that the illustrations were provided before the policy was in effect)
16 and not the Performance Factor. Moreover, his statements suggest that despite AG
17 49-A, he intended to provide illustrations that did not conform to AG 49-A; but
18 rather to again use cherry-picked past results that do not indicate future returns,
19 perhaps even inflated by the mysterious Performance Factor, and perhaps while
20 ignoring even PacLife's guidance as to the relevance of its projecting PDX policy
21 performance when premiums are relatively low, to illustrate what those returns
22 would be. By December 24, 2021, Andy Brown still did not have a responsive
23
24

1 illustration and told Simona Marie that he would not be able to get projected numbers
2 until January 3, 2022.

3 55.Illustrations. After the December 10, 2021 meeting with Andy Brown,
4 Plaintiffs also requested illustrations directly from PacLife, in order to get further
5 information about the level of future contribution that would be needed to sustain
6 the policy benefit. After receiving a slew of such illustrations from late January
7 2022 through February 2022, and based on those illustrations, Plaintiffs determined
8 that the future contributions required to sustain the policy benefit were not
9 acceptable to them.
10

11 56.Surrender. On April 11, 2022, Plaintiffs surrendered their PDX Policy.
12

13 57.PDX Change to Simona Marie's PDX Policy. PacLife effectively
14 acknowledged the deceptive quality of the PDX policy it sold to Simona Marie: In
15 2019, PacLife reformed the PDX product, replacing it with a new IUL product called
16 "Pacific Discovery Xelerator IUL 2" ("PDX 2"). Unlike the PDX policy sold to
17 Plaintiffs, the PDX 2 policy did not contain a fixed-charge multiplier unless they
18 bought a separate "Enhanced Performance Factor" rider. No Defendant notified
19 Plaintiffs of this change.
20

21 58.Policy Charges 12/8/2021-Surrender. From Plaintiffs' contributions and
22 accumulations, PacLife paid itself policy charges of \$ 41,038.09 in the period
23 December 8, 2021 to April 11, 2022.
24

1 59.Payment Upon Policy Surrender. Upon surrender, PacLife paid Plaintiffs
2 \$ 202,655.36 representing the difference between PacLife's stated accumulated
3 investment value of \$ 248,650.31, less a surrender charge of \$ 45,994.95.

4 60.Nonpayment Upon Policy Surrender. Plaintiffs had paid PacLife \$ 505,000
5 in premium. Plaintiffs' premiums paid plus the \$ 248,650.31 in accumulated policy
6 investment value earned equals \$ 753,650.31. PacLife had extracted from Plaintiffs
7 a total of \$ 452,384.95 in policy charges from 2017 policy inception through the
8 2022 policy cancelation, plus the surrender charge of \$ 45,994.95; a total of \$
9 498,379.90. PacLife refused Simona Marie's request for a *pro rata* return of the last
10 charge in the amount of \$ 8,215.92, that PacLife had taken for the period following
11 April 8, 2022, even though the policy was canceled as of April 11, 2022. That *pro*
12 *rata* amount is \$ 6,025.00. The difference between \$ 753,650.31 Plaintiffs paid and
13 earned, and the \$ 202,655.36 PacLife repaid them by check dated April 21, 2022, is
14 \$ 550,994.95. No Defendant refunded any fees charged.

15 61.Agency. All representations, actions and omissions of Andy Brown with
16 respect to Plaintiffs were made within the course and scope of Andy Brown's duties
17 as an agent of PacLife and the other Defendants. All representations, actions and
18 omissions of HFPI with respect to Plaintiffs were made within the course and scope
19 of HFPI's duties as an agent of Andy Brown, PacLife and the other Defendants. All
20 representations, actions and omissions of PacLife with respect to Plaintiffs were
21

1 made within the course and scope of PacLife's duties as an agent of Andy Brown,
2 HFPI and the other Defendants. All representations, actions and omissions of each
3 Unknown Defendant with respect to Plaintiffs were made within the course and
4 scope of that Unknown Defendant's duties as an agent of Andy Brown HFPI and
5 PacLife.
6

7 **IV. FIRST CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION -**
8 **ALL DEFEDANTS**

9 62.Prior allegations. Plaintiffs reallege the allegations above.

10 63.False statements. Defendants made false and/or materially misleading
11 statements to Plaintiffs in presenting the features, benefits, performance, safety and
12 risks of the PDX policy, as set forth above.

13 64.Guidance. Defendants knew or reasonably should have known that the
14 foregoing statements they made to Plaintiffs, including but not limited to statements
15 concerning the features, benefits, performance, safety and risks of their PDX policy,
16 were false and/or materially misleading, and would guide Plaintiffs in their business
17 transactions.
18

19 65.Negligence. Defendants were negligent in obtaining and/or
20 communicating the false and/or materially misleading information to Plaintiffs.

21 66.Reliance. Plaintiffs relied upon the false and/or misleading statements
22 made by Defendants.

23 67.Reasonableness. Plaintiffs' reliance on the false and/or misleading
24

1 statements made by Defendants was reasonable.

2 68.Causation. Defendants' false and/or misleading statements induced
3 Plaintiffs' purchase and cancelation of the PDX policy and the related harms,
4 expenses and other losses described herein, and were thus a cause in fact of harm to
5 Plaintiffs.
6

7 **V. SECOND CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY -**
8 **DEFENDANTS HFPI & ANDY BROWN &**
9 **UNKNOWN DEFENDANTS**

9 69.Prior allegations. Plaintiffs reallege the allegations above.

10 70.Fiduciary Duties. Defendants HFPI and Andy Brown and any Unknown
11 Defendants similarly situated as advisors and/or sellers to Plaintiffs of a PDX policy
12 as a retirement investment owed Plaintiffs the duty to render to them correct and
13 competent, carefully considered advice. These duties extended to providing
14 investment and financial planning advice, and were fiduciary duties. Those
15 Defendants had the duty to Plaintiffs place Plaintiffs' interests above Defendants'
16 own interests. Those Defendants had the duty to Plaintiffs to use such knowledge
17 and use such skill, prudence and diligence in preparing policy illustrations and in
18 procuring for them insurance and explaining to them the cost and risks of the
19 investment, as competent, careful members of their profession(s) would have and
20 use under similar circumstances. These duties extended to providing investment and
21 financial planning advice, and were fiduciary duties. These duties include the
22
23
24

1 obligation to exercise good faith, acting in the best interest of the client and avoiding
2 conflicts of interest; including but not limited to the Defendants' interests in profit.

3 71.Breach of Fiduciary Duties. Defendants breached their fiduciary duties to
4 Plaintiffs in the course of selling Plaintiffs their PDX policy without adequate
5 disclosures, by failing to advise them truthfully and adequately of industry critique
6 of PDX policies, and by failing to correct and otherwise remedy their
7 misrepresentations and wrongs, in the ways described above.
8

9 72.Causation. Defendants HFPI, Andy Brown, and/or Unknown Defendants'
10 breaches of fiduciary duty induced Plaintiffs' purchase and cancelation of the PDX
11 policy, payment of policy premiums, and the related harms, expenses and other
12 losses described herein, and were thus a cause in fact of harm to Plaintiffs.
13

14 **VI. THIRD CAUSE OF ACTION: PROFESSIONAL NEGLIGENCE -**
15 **DEFENDANTS HFPI & ANDY BROWN &**
16 **UNKNOWN DEFENDANTS**

17 73.Prior allegations. Plaintiffs reallege the allegations above.

18 74.Duties. Defendants HFPI and Andy Brown and any Unknown Defendants
19 similarly situated as advisors and/or sellers to Plaintiffs of a PDX policy owed
20 Plaintiffs the duty to render correct and competent, carefully considered insurance
21 and financial advice to Plaintiffs. Those Defendants had the duty to Plaintiffs to use
22 such knowledge and use such skill, prudence and diligence in preparing policy
23 illustrations and procuring for them insurance, and explaining to them the cost and
24

1 risks of the investment, as competent, careful members of their profession(s) would
2 have and use under similar circumstances. These duties extended to providing
3 investment and financial planning advice, and were professional duties. These duties
4 include the obligation to exercise good faith, acting in the best interest of the client
5 and avoiding conflicts of interest; including but not limited to the Defendants'
6 interests in profit.
7

8 75.Breach. Defendants breached their fiduciary duties to Plaintiffs in the
9 course of selling Plaintiffs their PDX policy without adequate disclosures, by failing
10 to advise them truthfully and adequately of industry critique of PDX policies, and
11 by failing to correct and otherwise remedy their misrepresentations and wrongs, in
12 the ways described above, which fell below the standard of professional care for
13 licensed life insurance brokers and financial advisors as practiced nationally, as well
14 as in the states of Washington and Utah.
15

16 76.Causation. Defendants' breaches in the foregoing regards caused
17 Defendants HFPI, Andy Brown and/or Unknown Defendants' professional
18 negligence induced Plaintiffs' purchase and cancelation of the PDX policy, payment
19 of policy premiums, and the related harms, expenses and other losses described
20 herein, and were thus a cause in fact of harm to Plaintiffs.
21
22
23
24

1 **VII. FOURTH CAUSE OF ACTION: VIOLATION OF THE**
2 **WASHINGTON CONSUMER PROTECTION ACT**
3 **(CHAPTER 19.86 RCW) -**
4 **ALL DEFENDANTS**

5 77.Prior allegations. Plaintiffs reallege the allegations above.

6 78.CPA. Washington's Unfair Business Practices and Consumer Protection
7 Act at RCW 19.86.020 provides, "Unfair methods of competition and unfair or
8 deceptive acts or practices in the conduct of any trade or commerce are hereby
9 declared unlawful."

10 79.Insurance Code Violations. Acts and practices that violate Washington's
11 insurance laws are *per se* unfair and deceptive within the meaning of Chapter 19.86
12 RCW.

13 80.RCW 19.86.170. RCW 19.86.170 provides, in part, "[t]hat actions and
14 transactions prohibited or regulated under the laws administered by the insurance
15 commissioner shall be subject to the provisions of RCW 19.86.020 and all sections
16 of [the CPA] which provide for the implementation and enforcement of RCW
17 19.86.020...." Defendants' actions and transactions are prohibited by those laws.

18 81.Life insurance illustrations - content & delivery. RCW 48.23A.020(3)
19 provides, in part, "If a policy form is identified by the insurer as one to be marketed
20 with an illustration, a basic illustration prepared and delivered in accordance with
21 this chapter is required," RCW 48.23A.060(1(a) provides, "If a basic illustration
22 is used by an insurance producer or other authorized representative of the insurer in
23
24

1 the sale of a life insurance policy and the policy is applied for as illustrated, a copy
2 of that illustration, signed in accordance with this chapter, shall be submitted to the
3 insurer at the time of policy application. A copy shall also be provided to the
4 applicant.” Plaintiffs do not recall signing any of Defendants’ illustrations.
5

6 82.Misrepresentations. RCW 48.23A.030(2) provides, in part, “When using
7 an illustration in the sale of a life insurance policy, an insurer or its producers or
8 other authorized representatives shall not: ... (b) Use or describe nonguaranteed
9 elements in a manner that is misleading or has the capacity or tendency to mislead;
10 ... (f) Provide an applicant with an incomplete illustration; (g) Represent in any way
11 that premium payments will not be required for each year of the policy in order to
12 maintain the illustrated death benefits, unless that is the fact;” Defendants’
13 descriptions and illustrations omitted information required to understand the nature
14 and course of the policy investment and the effect of nonguaranteed elements, were
15 incomplete, were misleading, and at least had the capacity and tendency to mislead
16 Plaintiffs, and in fact misled them to believe that premium payments would not be
17 required after the fifth annual premium was paid, in order to maintain the investment
18 benefit for the rest of Plaintiff Simona Marie’s life; all as described above. For
19 example, Andy Brown’s representations, made on behalf of himself and HFPI, to
20 Plaintiffs that they could lower their premium to \$ 35,000 and failing to mention that
21 without contributions in the years following the fifth annual contribution, the policy
22
23
24

1 charges would consume the investment, were materially misleading, unfair and
2 deceptive communications. The PacLife's self-serving boilerplate invitation to
3 Plaintiffs to "request illustrations with different assumptions to better understand
4 how the policy charges and non-guaranteed elements, like interest crediting rates
5 and/or policy loans and withdrawals, will affect the policy Accumulated Value and
6 Death Benefit" does not make a partial or misleading illustration complete.

8 83.Nonguaranteed elements. As defined by RCW 48.23A.015(7),
9 "Nonguaranteed elements" means the premiums, benefits, values, credits, or charges
10 under a policy of life insurance that are not guaranteed or not determined at issue.
11 By contrast, as defined by RCW 48.23A.015(6), "Guaranteed elements" "means the
12 premiums, benefits, values, credits, or charges under a policy of life insurance that
13 are guaranteed and determined at issue." The Performance Factor and policy charges
14 are "nonguaranteed elements".

16 84.Disciplined current scale. RCW 48.23A.030(3) provides, "If an interest
17 rate used to determine the illustrated nonguaranteed elements is shown, it shall not
18 be greater than the earned interest rate underlying the disciplined current scale."
19 RCW 48.23A.015(4) provides, "'Disciplined current scale' means a scale of
20 nonguaranteed elements constituting a limit on illustrations currently being
21 illustrated by an insurer that is reasonably based on actual recent historical
22 experience, as certified annually by an illustration actuary designated by the insurer.
23
24

1 Further guidance in determining the disciplined current scale as contained in
2 standards established by the actuarial standards board may be relied upon if the
3 standards:

4 “(a) Are consistent with all provisions of this chapter;

5 “(b) Limit a disciplined current scale to reflect only actions that have
6 already been taken or events that have already occurred;

7 “(c) Do not permit a disciplined current scale to include any projected
8 trends of improvements in experience or any assumed improvements
9 in experience beyond the illustration date; and

10 “(d) Do not permit assumed expenses to be less than minimum
11 assumed expenses.”
12

13
14 The PDX Performance Factor and policy charges do not conform to the disciplined
15 current scale statute.

16 85.Effect of each violation: Pursuant to RCW 48.23A.090, each violation of
17 Chapter 48.23A RCW violates RCW 48.30.010(1) and is an unfair method of
18 competition and/or an unfair and/or deceptive act or practice, and thus subject to
19 enforcement under Chapter 19.86 RCW.
20

21 86.RCW 48.30.010. RCW 48.30.010 provides in part, “(1) No person
22 engaged in the business of insurance shall engage in unfair methods of competition
23 or in unfair or deceptive acts or practices in the conduct of such business as such
24

1 methods, acts, or practices are defined pursuant to subsection (2) of this section.”
2 Subsection (2) includes in such unfair methods of competition or in unfair or
3 deceptive acts or practices those “as are expressly defined and prohibited by this
4 code,” or as the Washington insurance commissioner may, by properly promulgated
5 regulation, define as unfair or deceptive.
6

7 87.WAC 284-30-590(4). WAC 284-30-590(4) provides, “If an insured elects
8 to not continue coverage beyond the effective date of any change of rates or terms,
9 it is an unfair practice to refund any premium on less than a pro rata basis.” And yet,
10 Defendants wrongfully refunded their premium on less than a *pro rata* basis.
11

12 88.RCW 48.30.040. RCW 48.30.040 provides, “No person shall knowingly
13 make, publish, or disseminate any false, deceptive or misleading representation or
14 advertising in the conduct of the business of insurance, or relative to the business of
15 insurance or relative to any person engaged therein.” And yet, Defendants
16 wrongfully gave Plaintiffs false expectations through the use of deception and
17 misleading representations, as set forth above.
18

19 89.RCW 48.30.090. RCW 48.30.090 provides, “No person shall make, issue
20 or circulate, or cause to be made, issued or circulated any misrepresentation of the
21 terms of any policy or the benefits or advantages promised thereby, or the dividends
22 or share of surplus to be received thereon, or use any name or title of any policy or
23 class of policies misrepresenting the nature thereof.” And yet, Defendants
24

1 wrongfully did so, as set forth above.

2 90.RCW 48.110.140. RCW 48.110.140 provides, “The legislature finds that
3 the practices covered by this chapter are matters vitally affecting the public interest
4 for the purpose of applying the consumer protection act, chapter 19.86 RCW.
5 Violations of this chapter are not reasonable in relation to the development and
6 preservation of business. A violation of this chapter is an unfair or deceptive act or
7 practice in the conduct of trade or commerce and an unfair method of competition,
8 as specifically contemplated by RCW 19.86.020, and is a violation of the consumer
9 protection act, chapter 19.86 RCW. Any service contract holder or protection
10 product guarantee holder injured as a result of a violation of a provision of this
11 chapter shall be entitled to maintain an action pursuant to chapter 19.86 RCW against
12 the service contract provider or protection product guarantee provider and the insurer
13 issuing the applicable service contract or protection product guarantee
14 reimbursement insurance policy and shall be entitled to all of the rights and remedies
15 afforded by that chapter.”
16
17

18 91.Unequal bargaining positions. Plaintiffs and Defendants were in unequal
19 bargaining positions with respect to each other because Defendants had knowledge
20 of material facts which, if communicated to Plaintiffs, would have rendered the
21 investment unacceptable to Plaintiffs;
22

23 92.Expectation of service. Plaintiffs were justified in expecting that their best
24

1 interests would be served by the Defendants' product, representations and advice.

2 93.Wrongful practices. Defendants engaged in wrongful practices as
3 demonstrated by the facts alleged above, including but not limited to the inherent
4 deceptive nature of PDX policies, the materially misleading use and description of
5 PacLife's Performance Factor and other nonguaranteed elements in its standardized
6 illustrations, marketing materials, and policy documents used to market the PDX
7 policies to brokers and consumers. PacLife sought to skirt the AG 49 requirements,
8 and thereby violated industry fairness standards as well as the intention and spirit of
9 the AG 49 standard.
10

11 94.Profit. These wrongful practices had the effect Defendants intended;
12 namely, to cause Plaintiffs in the state of Washington to agree to enter into a PDX
13 insurance contract and to make payments pursuant to that contract, resulting in
14 unjust enrichment to Defendants. The public impact of PacLife's deceptive practices
15 was significant: PacLife bragged that it was the top-ranked IUL insurance performer
16 in the third quarter of 2017, and that this status was largely due to "its top-selling
17 [IUL] product, Pacific Discovery Xelerator." In 2019, Pac Life bragged that PDX
18 was "the #1 selling IUL for the last two years in a row."
19
20

21 95.Capacity to mislead. Defendants' wrongful acts and practices described
22 herein had the capacity to mislead and were likely to mislead and injure reasonable
23 consumers, and in fact misled Plaintiffs, by creating unrealistically optimistic
24

1 impressions.

2 96.Unfair and deceptive. Defendants' wrongful acts and practices described
3 herein were unfair methods of competition with respect to Plaintiffs as well as sellers
4 of other life insurance policies and financial investment products on the market, and
5 unfair and/or deceptive to Plaintiffs and others similarly situated.
6

7 97.Causation. Defendants' unfair and deceptive acts and practices caused
8 induced Plaintiffs' purchase and cancelation of the PDX policy, payment of policy
9 premiums, and the related business and economic losses described herein, and were
10 thus a cause in fact of harm to Plaintiffs.
11

12 98.Public interest. The wrongful acts described above affected the public
13 interest because the method of marketing PDX policies was widespread and,
14 apparently, financially profitable for Defendants at the expense of their customers,
15 including but not limited to Plaintiffs, and violated numerous Washington statutes,
16 regulations (such as those identified above) and common laws (such as the causes of
17 action asserted herein) intended to protect the public against such harms.
18

19 **VIII. FIFTH CAUSE OF ACTION: BREACH OF CONTRACT -**
20 **ALL DEFENDANTS**

21 99.Prior allegations. Plaintiffs reallege the allegations above.

22 100.Contracts. Plaintiffs had contracts with Defendants HCFI and Andy
23 Brown to provide accurate information and professional advice and services in
24 connection with purchase of the PDX policy. Plaintiffs had a contract with PacLife

1 as stated in the PDX contract and the other representations made by its agents,
2 including but not limited to HCFI, Andy Brown and other Defendants.

3 101. Breaches of Contract. Every contract has an implied duty of good faith
4 and fair dealing. Each Defendant breached that duty to Plaintiffs, causing them to
5 lose their premiums paid toward the PDX policy and their earnings thereon, less the
6 sum PacLife refunded, and to incur expenses related to servicing the PDX policy,
7 detailed below. Defendants' breaches of contract duty induced Plaintiffs' purchase
8 and cancelation of the PDX policy, payment of policy premiums, and the related
9 business and economic losses described herein, and were thus a cause in fact of harm
10 to Plaintiffs.
11

12 IX. INJURIES & DAMAGES

13 102. Prior allegations. Plaintiffs reallege the allegations above.

14 103. Injuries & Damages. Plaintiffs' injuries and actual damages include, but
15 are not limited to:
16

- 17 a. The promised expectancy of \$ 117,000 per year, as stated in Andy
18 Brown's email of October 11, 2019, from Simona Marie's age 65
19 through her actuarial life expectancy, plus any death benefit or other
20 residual value allowed by the policy; or, alternatively,
21

- b. The difference between \$ 753,650.31 Plaintiffs paid Defendants and earned on investment, and the \$ 202,655.36 PacLife repaid them by check dated April 21, 2022; which equals \$ 550,994.95;
- c. The administrative fees paid to Corporate Asset Retention, Inc. in the amount of \$ 2,000.00;
- d. The cost to establish, maintain dissolve, and wind up Altcont, LLC in amounts to be determined; including but not limited to formation and accountant fees, legal services, business license fees, and state and federal taxes, and other expenses, in the total amount of \$ 104,047.22, as follows (not including PDX policy premiums and payments to Corporate Asset Retention):

2017

- Secretary of State Corporation Fee Formation \$ 200.00

2017 Total \$ 200.00

2018

- IRS \$ 23,908.44
- Department of Revenue WA \$ 6,675.00
- Business License Fee \$ 59.00
- Secretary of State Annual Report Fee \$ 60.00
- Accountant payments \$ 2,435.00

2018 Total \$ 33,137.44

2019

- IRS \$ 19,952.48
- Department of Revenue WA \$ 3,633.42
- Business License Fee \$ 87.67
- Secretary of State Annual Report Fee \$ 60.00
- Accountant payments \$ 2,710.00
- Business checks payment \$ 23.70

2019 Total \$ 26,467.27

2020

- IRS \$ 22,613.28
- Department of Revenue WA \$ 65.70
- Business License Fee \$ 50.00
- Secretary of State Annual Report Fee \$ 60.00
- Accountant payments \$ 2,328.86

2020 Total \$ 25,117.84

2021

- IRS \$ 12,964.92
- Department of Revenue WA \$ 86.08
- Business License Fee \$ 50.00
- Secretary of State Annual Report Fee \$ 60.00
- Accountant payments \$ 2,338.35

2021 Total \$ 15,499.35

2022

- IRS \$ 210.40
- Department of Revenue, State of Washington \$ 26.52
- Accountant payments \$ 3,121.65

1 - Secretary of State – Dissolution Fee \$ 20.00

2 2022 Total \$ 3,378.57

3 2023

4 - Accountant payments \$ 246.75

5 2023 Total \$ 246.75;

- 6
- 7 e. The reasonable value of Simona Marie and Tom Lewis’s labor involved
- 8 in dealing with accounting, banking, payments, review of documents,
- 9 phone calls, meetings, estimated at \$ 200 per hour, 3 hours per month,
- 10 for 55 months, a total of \$ 33,000; and
- 11
- 12 f. All other costs incurred in establishing the corporate sponsored group
- 13 life insurance policy, in amounts to be determined.

14 104. California Punitive Damages. Punitive damages are available to

15 Plaintiffs against Defendants PacLife, HFPI and Andy Brown under Washington

16 conflict-of-law principles, and California Civil Code Section 3294, because:

- 17 a. A place where the conduct causing the injury, including but not limited
- 18 to the Defendants’ communications to Plaintiffs and other Defendants,
- 19 originated in California;
- 20
- 21 b. PacLife’s PDX policies were, on information and belief, brokered
- 22 and/or issued from California to persons and/or entities in California
- 23 and other states and commonwealths of the United States, including but
- 24

1 not limited to Washington, and were regulated by California;

2 c. PDX policies were marketed to and issued to California residents;

3 d. The basic policies of California law regulating the fields of insurance
4 and financial investment, including but not limited to the deterrence of
5 misconduct committed by and through its citizens, particularly those in
6 state-regulated industries, will be served by imposing punitive damages
7 here;
8

9 e. The policy, purposes and expectations sought to be achieved by
10 California's punitive damages law will be served by awarding punitive
11 damages in this matter against PacLife, which is located in California,
12 and all Defendants, each of which on information and belief does
13 business in and/or from California;
14

15 f. Certainty, predictability and uniformity of result will be furthered by
16 applying the California law of punitive damages;

17 g. This Court is fully capable of determining and applying California law;

18 h. The facts giving rise to this lawsuit demonstrate unequal knowledge
19 and bargaining power favoring Defendants, who are or should be
20 sophisticated merchants of insurance and financial investment
21 products, and familiar with the products they create and sell, over
22 Plaintiffs, who are not in those lines of business and, due to the
23
24

1 complexity of the product and lack of full and fair disclosure of and,
2 due to the complexity of the product and lack of full and fair disclosure
3 of the PDX policy features, were not sufficiently familiar with those
4 products at the time of purchase;

- 5
6 i. Defendants' misconduct identified above constitutes oppression and
7 malice within the meaning of California Civil Code Section 3294.

8 105. Utah Punitive Damages. Punitive damages are available to Plaintiffs
9 against Defendants PacLife, HFPI and Andy Brown under Washington conflict-of-
10 law principles, and Utah Code Section 78B-8-201, because:

- 11
12 a. A place where the conduct causing the injury, including but not limited
13 to the Defendant's communications to Plaintiffs, originated in Utah;
14
15 b. PacLife's PDX policies were brokered through Defendants HFPI and
16 Andy Brown, both located in Utah and regulated by Utah;
17
18 c. PDX policies were marketed to and issued to persons and/or entities in
19 Utah and other states and commonwealths of the United States,
20 including but not limited to Washington,;
21
22 d. The basic policies of Utah law regulating the fields of insurance and
23 financial investment, including but not limited to the deterrence of
24 misconduct committed by and through its citizens, particularly those in
state-regulated industries, will be served by imposing punitive damages

1 here;

2 e. The policy, purposes and expectations sought to be achieved by Utah's
3 punitive damages law will be served by awarding punitive damages in
4 this matter against Defendants that are located in and do business in
5 and/or from Utah;

6
7 f. Certainty, predictability and uniformity of result will be furthered by
8 applying the Utah law of punitive damages;

9 g. This Court is fully capable of determining and applying Utah law;

10 h. The facts giving rise to this lawsuit demonstrate unequal knowledge
11 and bargaining power favoring Defendants, who are or should be
12 sophisticated merchants of insurance and financial investment
13 products, and familiar with the products they create and sell, over
14 Plaintiffs who are not in those lines of business and, due to the
15 complexity of the product and lack of full and fair disclosure of the
16 PDX policy features, were not sufficiently familiar with those products
17 at the time of purchase;

18
19 i. The conduct as described above of one or more Defendants was
20 knowingly and/or recklessly indifferent to Plaintiffs' rights and
21 financial interests.
22
23
24

1 **X. RELIEF REQUESTED**

2 WHEREFORE, Plaintiffs respectfully request that this Court grant and award
3 them the following relief jointly and severally against the Defendants:

4 A. Monetary damage for:

- 5 a. Expectancy damages of \$ 117,000 per year from Simona Marie's
6 age 65 through her actuarial life expectancy as determined by
7 Washington law at the time of the award (at the time of filing this
8 Complaint estimated to be at least 28 years, which would be a
9 product of \$3,393,000), plus any death benefit or other residual
10 value allowed by the policy in an amount to be determined at trial;
11 or all of the following in subparts b. through f.:
12
13 b. Restitution of \$ 550,994.95, consisting of PDX policy premiums
14 paid in the total amount of \$ 505,000.00, plus earnings thereon of
15 \$ 248,650.31, less the sum refunded to date of \$ 202,655.36;
16
17 c. Administrative fees paid to Corporate Asset Retention, Inc. of
18 \$ 2,000.00;
19
20 d. Plaintiffs' cost to establish, maintain dissolve, and wind up Altcont,
21 LLC, in the amount of \$ 104,047.22 and/or additional amount to be
22 determined at trial;

e. Labor value of Plaintiffs Simona Marie and Tom Lewis associated with administration related to the PDX policy, in the amount of \$33,000 or such other amount determined at trial; and

f. All other costs incurred in establishing the corporate sponsored group life insurance policy, in amounts to be determined at trial;

B. Plaintiffs Simona Marie's and Tom Lewis's emotional distress in an amount to be determined at trial;

C. Treble damages in the maximum amounts authorized by RCW 19.86.090 for damages caused by each violation of the Washington Consumer Protection Act;

D. Pre-judgment and post-judgment interest to the maximum extent allowed by law;

E. Punitive damages in the maximum amounts authorized by law;

F. An award to Plaintiffs of their reasonable attorneys' fees and costs to the maximum extent authorized by law; and

G. Such other and further legal and/or equitable relief as is just and proper.

XI. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial on all the issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

1 DATED June 27, 2023.

2 STRITMATTER KESSLER KOEHLER MOORE

3 By: s/ Daniel R. Laurence

4 Daniel R. Laurence, WSBA #19697

5 By: s/ Brad J. Moore

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